IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.390 OF 2005

Hareshwar J. Keny .. Appellant

vs.

Raichand Rajmal Kothari
& Others .. Respondents.

Shri S.A.Mudbidri, Advocate for the Appellant.

Shri A.A.Kumbhakoni, Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 29th March, 2005.

P.C. :

1. Heard learned Counsel appearing for the parties. The appeal is preferred by the Original Defendant No.1 in a suit under section 6 of the Specific Relief Act, 1963 filed by the Respondent No.1. By the order impguned, the learned Trial Judge has appointed the Court Receiver in respect of the suit property. The Court Receiver has been directed to take possesion of the Suit property and hand over the same to the Respondent No.1 Plaintiff as his agent. The learned Trial Judge

has recorded a prima facie finding that the Respondent No.1 Plaintiff has been unlawfully dispossesed by the Appellant.

2. I have heard the learned Counsel appearing for the parties. In the Trial Court in the Afidavit in Reply filed by the Appellant/Defendant No.1 and in particular in paragraph no.6 thereof it is stated on oath by the Appellant that he has let out the suit premises to Shri Baban Kisan Jayle (Original Defendant No.2) on 16.1.1998. It is stated that Shri Jayle is doing his own business in the said premises. It is stated that the said Jayle has paid deposit of Rs.1500/- to the Appellant and has paid rent to the Appellant. The learned Counsel appearing for the Appellant submitted that now the Appelant has obtained possesion from the Defendant No.2 Shri Jayle. It is not in dispute that no such case is made out either in the Memorandum of Appeal or in the Civil Application. No such case was even made out in a Writ Petition under Article 227 of Constitution of India which was earlier filed for challening the impugned Judgment and Order. The Appellant could

not place on record any document to show that the Defendant No.2 has handed over possession to the him. Thus, it is apparent that the Appellant has made out a case before the Trial Court that he has parted with the possession of the suit premises in favour of the Defendant No.2 in the year 1998. It is pertinent to note that the suit is filed by the Respondent No.1 in the year 1999. In the circumstances, the Appellant is not affected by the impugned Judgment and Order. No appeal is preferred by the Original Defendant No.2.

3. In this view of the matter, there is no merit in the appeal and the same is dismissed with no order as to costs.

4. It is made clear that the findings recorded by the learned trial Judge are prima facie findings and the trial Judge will decide the suit without being influenced by the findings in the impugned Judgment and Order. The Appellant is at liberty to apply for expeditious hearing of the suit.

5. At this stage the learned Counsel appearing for the Appellant prays for continuation of ad-interim relief granted by this Court. The said prayer is opposed by the learned Counsel appearing for the Respondent No.1. Considering the fact that in the earlier Writ Petition filed by the Appellant, ad-interim relief was granted and the impugned order has not taken effect, Ad-interim order will continue to operate for a period of 6 weeks from today.

(A.S.Oka, J.)